

¹See K.S.A. 1999 Supp. 44-508(f).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, and considering the parties' briefs, the Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed.

On the morning of December 6, 1999, claimant arrived at her regular parking lot located south of the Judicial Center at 10th and Harrison Street in Topeka, Kansas. Claimant is employed by the Kansas Department of Health and Environment and her office is located in the Capitol Tower Office Building on the northwest corner of 8th and Harrison Streets. Claimant walked north from the Judicial Center parking lot on the east side of Harrison Street until she reached the south side of Ninth Street. There, at the pedestrian crosswalk, claimant crossed to the west side of Harrison Street.

The street condition was icy as it had snowed the night before. As claimant reached the handicap ramp on the southwest corner of Harrison and Ninth Streets, she slipped on some ice and fell. Claimant testified she fell on the ice that was on the ramp and the ramp had not been treated for the ice. But Lester L. Paul, Jr., supervisor in charge of snow and ice removal from the sidewalks around the Docking State Office Building, testified his crew had treated this handicap ramp before claimant fell. In fact, Mr. Paul testified he personally observed claimant fall. He testified claimant slipped on the ice located in the street before she reached the handicap ramp. Mr. Paul also testified the State of Kansas did not own the public sidewalk where claimant fell. The public sidewalk was actually owned by the City of Topeka.

K.S.A. 1999 Supp. 44-508(f) provides in pertinent part as follows:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer.

Here, the claimant contends her fall and left shoulder injury are compensable because her employer, the State of Kansas, maintained the public sidewalk by removing the snow and ice. Additionally, the claimant argues the route she took from the Judicial Center parking lot was her only available route to work, the route involved a special risk or hazard, and the route was not used by the general public except in dealing with the State of Kansas.

The Appeals Board concludes the preliminary hearing record establishes that the claimant slipped and fell on ice in the gutter of a public street and landed on the public sidewalk injuring her left shoulder. The Appeals Board finds neither the public street nor the public sidewalk can be construed as claimant's employer premises. Second, the route claimant used to walk from the Judicial Center parking lot to her employment location at 8th and Harrison was not the only available route, the route did not involve a special risk or hazard, and the general public used the route for purposes other than dealing only with the State of Kansas.

Therefore, the Appeals Board concludes claimant's accidental injury did not arise out of and in the course of her employment because the accident occurred on her way to work and none of the exceptions to the "going and coming" rule apply.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's March 10, 2000, preliminary hearing Order Denying Compensation should be, and it is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
Marcia L. Yates, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director